(2)

Supreme Court, U.S.
FILED

031362 MAR 25 2004

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

JOHN WILLIAM MOODY - PETITIONER

V.

UNITED STATES OF AMERICA - RESPONDENT

On Petition for Writ of Certiorari
UNITED STATES COURT OF APPEALS
11TH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

"S/ JOHN WILLIAM MOODY"
John William Moody, pro se
2300 Philips Highway
Room 133
Jacksonville, Florida 32207
(904) 396-2301 Ext. 133

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 03-11244
NON-ARGUMENT CALENDAR

D.C. Docket No. 02-00072-CV-J-25-TE

JOHN WILLIAM MOODY
a.k.a. John W. Moody, etc.

Plaintiff-Appellant

versus

U.S. FEDERAL GOVERNMENT

Defendant-Appellee

FILED
U.S. COURT OF
APPEALS
ELEVENTH CIRCUIT
SEP. 08 2003
THOMAS K. KAHN
CLERK

Appeal from the United States District Court for the
Middle District of Florida

(September 8, 2003)

Before BLACK, BARKETT and HULL, Circuit Judges.

PER CURIAM:

[DO NOT PUBLISH]

"APPENDIX A"

John William Moody appeals *pro se* the district court's dismissal, for lack of subject-matter jurisdiction, of his complaint against the United States, made under the federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-80. We review the district court's dismissal of a case for lack of subject-matter jurisdiction *de novo*. *Carter v. Rodgers,* 220 F.3d 1249, 1252 n.3 (11th Cir. 2000).

A debtor must "obtain leave of the bankruptcy court before initiating an action in district court when that action is against the trustee or other bankruptcy-court appointed officer, for acts done in the actor's official capacity." *Id.* at 1252. In the instant matter, the district court did not err in dismissing Appellant's action for lack of subject-matter jurisdiction, since Appellant did not obtain leave from the bankruptcy court prior to initiating his claim against the United States in the district court. Appellant's argument that he was not required to obtain leave because his bankruptcy estate was closed at the time he initiated his claim in district court is misplaced. Under the *Barton* doctrine,[1] Appellant needed to obtain the leave of the bankruptcy court in order to bring his claim in the district court against the U.S. Trustee and Chapter 7 Trustee, since "leave of the court by which he [the trustee] was appointed must be obtained." *Id.* In addition, Appellant's argument that he did not need to obtain leave from the bankruptcy court because he is suing the United States and not an individual is without merit; the thrust of his claim is the malfeasance of the U.S. Trustee and the

[1]The Supreme Court in *Barton v. Barbour*, 104 U.S. 126, 127 (1881), stated that "[i]t is a general rule that before suit is brought against a receiver[,] leave of the court by which he was appointed must be obtained." Although *Barton* involved a receiver in state court, the circuit courts have extended the *Barton* doctrine to lawsuits against a bankruptcy trustee. *See Carter,* 220 F.3d at 1252.

Chapter 7 Trustee, and the policy of the leave requirement "enables bankruptcy judges to monitor the work of the trustees more effectively." *Id.* at 1253. Therefore, because Appellant did not obtain the requisite leave from the bankruptcy court, the district court did not have subject-matter jurisdiction over his claim. *Id.* at 1252.

Even assuming subject-matter jurisdiction existed, Appellant's claim in untimely. The FTCA's statute of limitations provides that a claim is barred unless "presented in writing to the appropriate federal agency within two years after such claim accrues." 28 U.S.C. § 2401(b). Appellant admits he filed a claim in June 2001 with the U.S. Department of Justice, Office of the U.S. Trustee, regarding malfeasance of the U.S. Trustee and Chapter 7 Trustee from May 1994 through May 1998. At the latest, Appellant's claim "accrued" in October 1995, when he called the U.S. Trustee's Office to complain about the malfeasance, and he was "armed with the facts about the harm done to him." *United States v. Kubrick,* 100 S. Ct. 352, 360 (1979).

Upon review of the record and consideration of the briefs, we find no reversible error.

AFFIRMED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
CASE NO. 3:02-cv-72-J-25TEM

JOHN WILLIAM MOODY
a/k/a JOHN W. MOODY
a/k/a JOHN MOODY,
Plaintiff,

vs.

UNITED STATES,
Defendant,

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CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

ORDER

THIS CAUSE is before the Court on Defendant United States' Motion to Dismiss (Dkt. 7) and *pro se* Plaintiff[1] John Moody's response (Dkt. 8). Upon consideration, the Court finds as follows:

I. Facts and Procedural History[2]

On May 14, 1993, Plaintiff filed a petition for bankruptcy under provisions of 11 U.S.C. Chapter 11. Moody was a debtor-in-possession as the case proceeded in Chapter 11 bankruptcy; he held title to the property in the estate and served as trustee of the estate with authorization to manage its financial affairs to otherwise act on the estate's behalf subject to the jurisdiction of the

[1]As a general rule, a court must read a pro-se plaintiff's allegations in a liberal fashion. *Haines v. Kerner,* 404 U.S. 519, 520, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972). Since the plaintiff in this case is acting *pro se*, the Court will endeavor to read all of his submissions in the most liberal of *Haines*-intended fashions.

[2]In considering a motion to dismiss, the court must take all material allegations of the complaint as true and liberally construe those allegations in favor of the plaintiff. *Scheuer v. Rhodes,* 416 U.S. 232, 236 (1974).

bankruptcy court. The estate included three real properties; 2000 South Palm Avenue, 2117 Silver Lake Drive, and a vacant lot also on South Palm Avenue. Each of these real estate holdings is located in Palatka, Florida.

Nearly a year later, on May 5, 1994, the U.S. Trustee objected to confirmation of Moody's plan of reorganization and the U.S. Trustee recommended that Moody's bankruptcy case be converted from Chapter 11 (Reorganization) to Chapter 7 (Liquidation). The bankruptcy court converted the case from Chapter 11 to Chapter 7 on May 12, 1994. Valerie Hall Manuel was appointed to serve as the Chapter 7 Trustee by the U.S. Trustee. Manuel became the legal representative of the bankruptcy estate and title to all property in the estate was vested in Manuel as Chapter 7 Trustee.

The Chapter 7 Trustee filed a final report on the bankruptcy estate on June 17, 1994, however the bankruptcy case was not closed until May 18, 1998. In her June 17, 1994, final report, the Chapter 7 Trustee asserts that "there is no property available for distribution from the estate over and above that exempted by law" and no distribution was made. In fact, the value of the real estate holdings exceeded all of Moody's secured and unsecured claims by $87,794.66, thus there was property that could potentially have been distributed. The Chapter 7 Trustee also falsely certified in the final report that the estate had been fully administered.

On February 6, 1995, the 2000 South Palm Avenue property was sold at a foreclosure sale. Despite its appraised value of $109,000.00 the property was sold for $41,062.19, resulting in an approximate $68,000.00 loss to the bankruptcy estate. If the U.S. Trustee or Chapter 7 Trustee had properly administered the estate, this property may have been sold on the real estate market and this

large loss to the estate possibly avoided.

On July 12, 1995, the 2117 Silver Lake Drive property and the remaining South Palm Avenue property were also sold at a foreclosure sale. These properties had a combined appraised value of $45,00.00 but were sold at foreclosure for $1,000.00. Again, if the U.S. Trustee or Chapter 7 Trustee had properly administered the estate, this property may have been sold on the real estate market and this large loss to the estate possibly avoided. On July 28, 1995, Plaintiff informed the U.S. Trustee that these foreclosure sales had been financially detrimental to the estate, and pointed out that the holder of the legal title in the properties (the Chapter 7 Trustee) had not been named as a party defendant in the foreclosure. Nevertheless, neither the U.S. Trustee nor the Chapter 7 Trustee sought to vacate the foreclosure sale.

On October 19, 1995, Moody asked the Chapter 7 Trustee (via a telephone conversation with the Trustee's secretary) to file a motion to vacate the foreclosure sale of the 2000 South Palm Avenue property. The Chapter 7 Trustee refused to file a motion; she also refused to speak with Moody.

As stated earlier, the bankruptcy case was closed on May 18, 1998. On March 13, 2000, Moody asked the bankruptcy court to proceed on the bond of the Chapter 7 Trustee; the motion was denied because the case was closed. On March 20, 2000, Moody sought to reopen the case and have the bankruptcy court reconsider the March 13 motion. The bankruptcy court denied the motion because it was too late, refused to reopen the case, and instructed Plaintiff to seek relief in another court.

Plaintiff, acting pro se, filed the instant Complaint (Dkt. 1) on January 29, 2002. Plaintiff sues Defendant for the acts of the U.S. Trustee and the Chapter 7 Trustee

under the Federal Tort Claims Act (FTCA).[3] Defendant seeks to have the Court dismiss the case with prejudice.

II. Discussion

The Court finds that it must dismiss this suit. Such is the case for two reasons.

First, the Eleventh Circuit has held, relying on a long line of case law, that a debtor must first obtain leave of the bankruptcy court before initiating a tort action in district court against the trustee or other officer appointed by the bankruptcy court, for acts done in the trustee's official capacity. *See Carter v. Rodgers*, 220 F.3d 1249, 1252 (11th Cir. 2000). Plaintiff has failed to obtain that leave of the bankruptcy court; in fact, he never asked.[4] Absent that leave, the court finds that it does not have subject-matter jurisdiction over Plaintiff's cause of action. *Id.* at 1253.

Assuming arguendo that Plaintiff had obtained leave of the bankruptcy court to pursue this tort action against the U.S. Trustee and the Chapter 7 Trustee, then the Court would find that this FTCA action is time-barred. Congress has specified under 28 U.S.C. § 2401(b) a statute of limitations for bringing a tort claim against the United States. 28 U.S.C. § 2401(b) states:

> [a] tort claim against the United States shall be forever barred unless it is presented in writing to the

[3]Codified at 28 U.S.C. §§ 1346(b), 2401(b), 2402, 2671-2680.

[4]It is true that almost two years before the instant action Plaintiff sought to re-open his estate in order to proceed on the bond of the Chapter 7 Trustee. Seeking to proceed on the bond of the Chapter 7 Trustee in bankruptcy court is not seeking leave of the bankruptcy court to sue the U.S. Trustee and the Chapter 7 Trustee in tort in district court. The bankruptcy court instructing Plaintiff to seek relief as to his motion to proceed on the Chapter 7 Trustee's bond elsewhere is not equivalent to the bankruptcy court granting Plaintiff leave to pursue the U.S. Trustee and the Chapter 7 Trustee in tort in district court.

appropriate federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

In examining each of the tortious acts of which Plaintiff complains, it becomes clear that all the acts occurred more than two years before Plaintiff presented the claims to the appropriate Federal agency. Plaintiff submitted his administrative tort claim to the U.S. Trustee on June 21, 2001. The torts of which Plaintiff complains, and the dates they occurred upon, are listed below:

i. U.S. Trustee's recommendation to convert Chapter 11 proceeding to Chapter 7 — occurred on May 5, 1994;
ii. Chapter 7 Trustee's final report which falsely certified there was no property to be distributed and that the Chapter 7 Trustee had administered the estate — occurred on June 17, 1994;
iii. Chapter 7 Trustee's failure to prevent the foreclosure sales of the real estate holdings in the estate — occurred on February 6 and July 12, 1995.
iv. Chapter 7 Trustee's failure to seek to vacate the foreclosure sales, despite Plaintiff's instructing U.S. Trustee that she should do so — occurred on July 28, 1995; and
v. Chapter 7 Trustee's refusal to speak with Plaintiff or heed his telephonic advice to move to vacate the first foreclosure sale — occurred on October 19, 1995.

The Court has examined *pro se* Plaintiff's Complaint closely and these are all the torts[5] by federal actors that the Court can find alleged. Each of the listed torts occurred more than five years before Plaintiff filed his

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[5]Taken as true for purposes of the Court's ruling.

administrative claim in June 2001.[6] Therefore, since the statute of limitations on FTCA claims is two years, the court must find that Plaintiff's complaint is time-barred. The Court is unpersuaded by Plaintiff's argument that his asking the bankruptcy court to re-open the case in order for him to proceed against the Chapter 7 Trustee's bond tolled the running of the statute of limitations on his FTCA action. Even if the Court were to find that argument persuasive, the statute of limitations on Plaintiff's FTCA claims had already run when he sought to re-open the case in 2000.

III. Conclusion

For the above reasons, Defendant's Motion to Dismiss is due to be granted.

Accordingly, it is

ORDERED:

1. Defendant's Motion to Dismiss (Dkt. 7) is **GRANTED;**
2. All pending motions (Dkts. 20, 21, 22, 27) are **DEEMED MOOT**; and
3. The Clerk is **DIRECTED** to close this case.

DONE AND ORDERED in chambers this 10th day of February, 2003.

"S/ HENRY LEE ADAMS, JR."
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record
Paula Goins, CRD

[6]The statute of limitations did not begin running on the date the bankruptcy case was closed, as Plaintiff would argue; it began running on the date each tort occurred and Plaintiff became aware of the torts.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 03-11244-EE

JOHN WILLIAM MOODY,
a.k.a. John W. Moody, etc.,
Plaintiff-Appellant
versus
U.S. FEDERAL
GOVERNMENT,
Defendant-Appellee

FILED
U.S. COURT OF
APPEALS
ELEVENTH CIRCUIT
DEC 29 2003
THOMAS K. KAHN
CLERK

On Appeal from the United States District Court for the Middle District of Florida

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ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC
(Opinion_____, 11th Cir., 19___, ____ F.2d____).

Before BLACK, BARKETT and HULL, Circuit Judges.

PER CURIAM:
The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:
"S/ SUSAN H. BLACK"
UNITED STATES CIRCUIT JUDGE ORD-42 (12/01)

"APPENDIX C"

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 03-11244-EE

JOHN WILLIAM MOODY,
a.k.a. John W. Moody, etc.,
Plaintiff-Appellant
versus
U.S. FEDERAL GOVERNMENT,
Defendant-Appellee

FILED
U.S. COURT OF
APPEALS
ELEVENTH CIRCUIT
JAN 15 2004
THOMAS K. KAHN
CLERK

On Appeal from the United States District Court for the
Middle District of Florida

ORDER:

( ) The motion of appellant, Moody, for (X) stay
( ) recall and stay of the issuance of the mandate
pending petition for writ of certiorari is DENIED.

(X) The motion of appellant, Moody, for (X) stay
( ) recall and stay of the issuance of the mandate
pending petition for writ of certiorari is GRANTED
to and including 3-29-04, the stay to continue in
force until the final disposition of the case by the
Supreme Court, provided that within the period of
above mentioned there shall be filed with the Clerk
of this Court the certificate of the Clerk of the
Supreme Court that the certiorari petition has been
filed. The Clerk shall issue the mandate upon the
filing of a copy of an order of the Supreme Court
denying the writ, or upon expiration of the stay

granted herein, unless the above mentioned certificate shall be filed with the clerk of this Court within that time.

"S/ SUSAN H. BLACK"
UNITED STATES CIRCUIT JUDGE ORD-45

TITLE 28, USCS, SECTION 1346

§ 1346. United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the United States Claims Court, of:

(b) Subject to the provisions of chapter 171 of this title [28 USCS §§ 2671 et seq.], the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting withing the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

TITLE 28, USC, SECTION 1334

§ 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district court shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

In re Daniel BOONE and Sara Boone, Debtors.

COMMUNITY BANK OF HOMESTEAD,
Plaintiff-Appellant,
v.
Daniel BOONE, Sara Boone,
Defendants - Appellees.

No. 94-4252

United States Court of Appeals,
Eleventh Circuit.

May 23, 1995

2. Bankruptcy 2043(3)

For federal bankruptcy jurisdiction to exist, case must at minimum "relate to" case under Title 11. 28 U.S.C.A. § 1334(b).

In the MATTER of James P. WOOD, M.D.
and Carol B. Wood, Debtors.

Dr. Arthur E. WOOD, III,
Plaintiff-Appellant,
v.
Dr. James P. WOOD, Carol Wood,
Woodrow Barham & Wayne
Clinic, P.A., Defendants-Appellees.

No. 86-4510.

United States Court of Appeals,
Fifth Circuit.

Aug. 26, 1987.

1. Bankruptcy 293(1)

The 1984 Bankruptcy Act did not change scope of bankruptcy jurisdiction set forth in 1978 Act, but rather altered placement of bankruptcy jurisdiction by creating statutory distinction between core and non-core proceedings and restricting power of bankruptcy court to adjudicate the latter. 28 U.S.C.A. § 1334.

2. Bankruptcy 293(1)

Test for whether matter is "related to" bankruptcy, within meaning of jurisdictional statute, is whether outcome of proceeding could conceivably have any effect on estate being administered in bankruptcy. 28 U.S.C.A. § 1334.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In Re: Case No 93-02251-3F7
JOHN WILLIAM MOODY
2300 Phillips Highway, Room 109
Jacksonville, FL 32207
DSSAN: 263-20-7306
AKA John W. Moody
AKA John Moody

ORDER APPROVING TRUSTEE'S REPORT OF NO DISTRIBUTION AND CLOSING ESTATE

It appearing to the Court that the Trustee has filed a report of no distribution and the Trustee has performed all other duties required in the administration of this estate; it is

ORDERED:

1. The report is approved and the estate is closed;
2. The Trustee is discharged from and relieved of his/her trust; and the bond of the Trustee is canceled and the surety is released from further liability thereunder, except any liability which may have accrued during the time such bond was in effect.

BY THE COURT
"S/Jerry A. Funk"
United States Bankruptcy Judge

Dated: May 18, 1998

Copies furnished to:
Debtor
Trustee: Valerie Hall Manuel
U.S. Trustee

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CASE NO: 93-2251-BKC-3P7

IN RE:
JOHN WILLIAM MOODY, Debtor(s)/

ORDER CONVERTING CASE TO CHAPTER 7 AND ESTABLISHING BAR DATES AND NOTICE BY THE CLERK OF MEETING OF CREDITORS AND APPOINTMENT OF TRUSTEE

A hearing was held, upon notice to all creditors, at which the Court deemed it in the best interest of creditors and the estate that this case be converted.

It is ORDERED and NOTICED as follows:

1. Pursuant to 11 U.S.C. § 1112, this case is converted to Chapter 7 of the Bankruptcy Code.
2. All orders authorizing the debtor-in-possession to manage individual financial affairs are rescinded.
3. The creditors committee is dissolved. (If appropriate)
4. All applications for administrative fees and expenses for parties other than the trustee must be filed on or before July 11, 1994.
5. In accordance with Federal Rule of Bankruptcy Procedure 1019(5), the debtor-in-possession or trustee shall file a full report and account on or before June 13, 1994. Also, on or before May 27, 1994, the debtor-in possession or trustee shall file: (a) a separate schedule listing all unpaid debts incurred

after commencement of the Chapter 11 case, including the name and address of each creditor; (b) a schedule of all properties acquired after the commencement of the Chapter 11 case, but before the entry of order of confirmation and entry of this order of conversion (if applicable), and (c) a schedule of all executory contracts and unexpired leases entered into or assumed after the commencement of the Chapter 11 case, but before the entry of this conversion order.

ORDERED this 12 day of May, 1994, at Jacksonville, Florida.

"S/GEORGE L. PROCTOR"
GEORGE L. PROCTOR
United States Bankruptcy Judge

NOTICE IS GIVEN OF THE FOLLOWING:

1. The U.S. Trustee has scheduled an additional meeting of creditors pursuant to 11 U.S.C. § 341, for June 17, 1994, at 9:30 a.m., at 311 West Monroe Street, Room 143C, Jacksonville, Florida 32202, at which the debtor or its representative and the attorney of record shall appear in person. The 341 meeting may be adjourned from time to time without further written notice.
2. The U.S. Trustee has appointed Valerie Hall Manuel, whose address is P.O. Box 1258, Jacksonville, FL 32201, as the Chapter 7 Trustee and bond is fixed at $300,000.00 by Fidelity and Deposit Company of Maryland.
3. Any creditor who has filed a proof of claim in the Chapter 11 case is not required to file a proof of

claim in the converted Chapter 7 case. All other creditors must file a proof of claim on or before September 15, 1994.

4. August 16, 1994, is fixed as the last day for filing of a complaint objecting to the discharge of the debtor(s) or seeking an exception to discharge under 11 U.S.C. § 523 (a)(2), (4) or (6). If no such complaint is timely filed the discharge will be granted.
5. An explanation of the legal effect of the bankruptcy discharge and any matters relevant to reaffirmation agreements are herewith being mailed to the debtor(s).

DATED this 12 day of May, 1994.

BY THE COURT

CARL R. STEWART, CLERK

Copies furnished to:
Debtor
U.S. Trustee
Chapter 7 Trustee
All Interested Parties

#223

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE:
JOHN WILLIAM MOODY, a/k/a JOHN W. MOODY, a/k/a JOHN MOODY
Appellant/Debtor

District Court Case No. 94-639-Civ-J-20

On Appeal from the United States Bankruptcy Court for the Middle District of Florida, Jacksonville, Div. Case No. 93-2251-BKC-3P7

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95 FEB-3 AM 9:54
CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

ORDER

John William Moody is appealing the Bankruptcy Court's Order Converting Case to Chapter 7 dated May 12, 1994, in Case No. 93-2251-BKC-3P7. On October 18, 1994, the Court entered an Order (Doc. No. 11) directing Appellant to serve a copy of his brief on Appellees and to file with the Court a Certificate of Service of such service. Appellant complied by filing a Certificate of Service (Doc. No. 12) on October 26, 1994. To date, however, Appellees have not filed a reply to Appellant's brief.

I. TIMELINESS OF APPEAL

Section 158(a) of Title 28 provides that the district court shall have jurisdiction to hear appeals from final

judgments, orders and decrees of the bankruptcy courts. See 28 U.S.C. § 158(a). Subsection 158(c) provides "the appeal shall be taken... in the time provided by Rule 8002 of the Bankruptcy Rules." 28 U.S.C. § 158(c).

Bankruptcy Rule 8002(a) states, "Ten-day period. The notice of appeal shall be filed with the clerk within 10 days of the date of entry of the judgment, order, or decree appealed from." Compliance with Rule 8002 is both jurisdictional and mandatory. See In re East Coast Brokers and Packers, Inc., 134 B.R. at 42 (citing In re Abdallah, 778 F.2d 75, 77 (1st Cir. 1985)). Bankruptcy Rule 8002(b) states in relevant part: "If a timely motion is filed in bankruptcy court by any party:...; (3) under Rule 9023 to alter or amend judgment; or (4) under 9023 for a new trial, the time for appeal for all parties shall from the entry of the order granting or denying a new trial..."

The Eleventh Circuit held that a timely Rule 9023 motion tolled the running of the statutory ten day appeal period until entry of the order denying the Rule 9023 motion. See In re Mike, 796 F.2d 382 (11th Cir. 1986). The Order Converting Case to Chapter 7 was filed May 12, 1994. However, Appellant filed a motion for reconsideration on May 23, 1994, that was denied by the bankruptcy court on May 25, 1994. Thus, the statutory time for filing the notice of appeal did not begin to run until May 25, 1994. Appellant filed his Notice of Appeal on June 2, 1994. Therefore, Appellant's Notice of Appeal was timely filed.

II. IMPROPER NOTICE

This Court reviews *de novo* the legal conclusions of the Bankruptcy Court. See In re JLJ Inc., 988 F.2d 1112, 1116 (11th Cir. 1993). However, the Court is to accept the Bankruptcy Court's findings of fact unless those findings are clearly erroneous. See In re Georg, 930 F.2d 1563,

1566 (11th Cir. 1991); In re Downtown Properties, Ltd., 794 F.2d 647 (11th Cir. 1986); In re East Coast Brokers and Packers, Inc., 134 B.R. 41, 42 (M.D. Fla. 1991); Bankruptcy Rule 8013.

Appellant/Debtor is appealing the bankruptcy court's Order Converting Case to Chapter 7 dated May 12, 1994.

Debtor requests that the case be converted back to Chapter 11 and that Debtor be given authority to manage his individual financial affairs. Debtor alleges that he did not receive adequate notice of the conversion hearing.

[1]The Bankruptcy Court converted this case from a Chapter 11 proceeding to a Chapter 7 proceeding pursuant to 11 U.S.C. § 1112(b). 11 U.S.C. § 1112(b) states that in pertinent part that

> [O]n request of a party in interest or the United States trustee or bankruptcy administrator, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate...

Section 1112(b) permits the court to convert a Chapter 11 proceeding to a Chapter 7 proceeding only after notice and a hearing. Bankruptcy Rule 2002(a)(5) provides for a 20-day period of notice of a hearing to convert. Bankruptcy Rule 2002(a)(5) states in pertinent part that

> [t]he clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 20 days notice by mail of... in a chapter 11 reorganization case... the hearing on... the conversion of the case to another chapter[.]

In the instant case, it appears that Debtor was not given the requisite twenty-days notice of the hearing converting the case to Chapter 7. On February 2, 1994,

the Bankruptcy Court entered an Order Approving Disclosure Statement, Scheduling Confirmation Hearing, and Fixing Time for Filing Acceptances or Rejection of the Plan. In this Order, the confirmation hearing was set for May 10, 1994. This Order did not mention anything about converting the case to a Chapter 7 liquidation proceeding. On April 6, 1994, Creditors Edward Merril O'Hara and Sally Lightbody O'Hara filed their Rejection of Chapter 11 Plan in which they rejected the amended plan of reorganization and requested that it not be confirmed. They did not, however, request that the case be converted to a Chapter 7 liquidation proceeding... On May 5, 1994, the United States Trustee filed the Objection of United States Trustee to Confirmation of Debtor's Plan of Reorganization. It was in this pleading that the United States Trustee requested that the case be converted to Chapter 7. Thus, Plaintiff was not given notice that conversion of the case would be brought up at the May 10, 1994, hearing until approximately May 5, 1994. No mention of conversion was made prior to the Objection of United States Trustee to Confirmation of Debtor's Plan of Reorganization.

The twenty-day period in Rule 2002(a)(5) may only be shortened for cause shown. See 8 HON R. GLEN AYERS ET AL., COLLIER ON BANKRUPTCY § 2002.04(e), at 2002-31 (Lawrence P. King et al. eds. 1994) (citing In re Mandalay Shores Co-Op Housing Ass'n, Inc., 63 B.R. 842, 852 (N.D. Ill. 1986); In re Hill Top St. Corp., 42 B.R. 517, 520 (Bankr. D. Mass. 1984)); Bankruptcy Rule 9006(c)(1). However, no motion to reduce the notice period had been made and no exigent circumstances appear to have existed to support a reduction in time.

The flexibility written into Bankruptcy Rule 9006 to

reduce the time for notice should be sparingly invoked and may be invoked only for cause shown. See In re Sandra Cotton, Inc., 65 B.R. 153, 156 (W.D.N.Y. 1986). Administrative convenience does not justify an abbreviated notice. See id. In the instant case no unusual circumstances were presented as justifying the shortened notice period. Further, the Bankruptcy Court did not even acknowledge that the notice period was shortened and gave no reasons for such a shortening. Thus, the Court finds that the Bankruptcy Court erred when it failed to ensure that Debtor was given twenty days notice as required by Rule 2002(a)(5).

Nevertheless, the Court fails to find any violation of Debtor's rights which justify reversing the Bankruptcy Court's determination or which justify remanding the case for further hearings. The Court finds that there was a very strong case in support of converting the action to Chapter 7. The Court finds that the improperly shortened notice was harmless error. See Bankruptcy Rule 9005.

Appellant has also filed an Emergency Motion to Vacate Discharge of Debtor (Doc. No. 16). Appellant argues that the Bankruptcy Court did not have jurisdiction to discharge his debts on October 31, 1994, since this appeal was pending. The Court disagrees. On November 2, 1994, the Court entered and Order (Doc. No. 14) in which it denied Appellant's Motion for Stay Pending Appeal (Doc. No. 13) since it was not clear that Appellant would prevail on appeal. Thus, the Bankruptcy Court's Order Converting Case to Chapter 7 was not stayed pending this appeal, and the Bankruptcy Court had jurisdiction to proceed with discharging Appellant's/ Debtor's debts. Even if the Bankruptcy Court erred in discharging Appellant's/Debtor's debts while the appeal before this Court was pending, the Court finds this to have

been harmless error.

Accordingly, it is **ORDERED AND ADJUDGED:**

(1) Appellant's appeal is **DENIED**;

(2) the Motion Requesting that Case of John William Moody be Converted to Chapter 11 and Authority for Debtor to Manage Individual Financial Affairs be Reinstated (Doc. No. 5) is **DENIED**;

(3) the Emergency Motion to Vacate Discharge of Debtor (Doc. No. 16) is **DENIED**; and

(4) the Clerk is directed to close the file.

DONE AND ENTERED at Jacksonville, Florida, this 2nd day of February, 1995.

"S/ HARVEY E. SCHLESINGER"
United States District Judge

TITLE 11, USC, § 554

§ 554. Abandonment of property of the estate

(c) Unless the court orders otherwise, any property scheduled under Section 521(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of Section 350 of this title.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CASE NO: 93-02251-3F7

IN RE:
MOODY, JOHN WILLIAM
a/k/a: MOODY, JOHN W.;
MOODY, JOHN
Debtor(s)

FILED
JACKSONVILLE, FLORIDA
MAR 14 2000
CLERK, US
BANKRUPTCY COURT
MIDDLE DISTRICT OF
FLORIDA

ORDER DENYING MOTION FOR COURT TO PROCEED ON BOND OF CHAPTER 7 TRUSTEE

Upon consideration of the Motion for Court to Proceed on Bond of Chapter 7 Trustee filed by John William Moody. The Court finds that the case was closed May 18, 1998. No motion to reopen the case has been filed and it is

ORDERED:

The Motion is denied and no further filings will be accepted without an Order Granting Motion to Re-open first having been entered.

DATED March 14, 2000, at Jacksonville, Florida.

"S/ JERRY A. FUNK"
Jerry A. Funk
United States Bankruptcy Judge

Copies to:
Debtor
Trustee
US Trustee
BNC 3/14/2000 SMC

"APPENDIX M"

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE: CASE NO: 93-02251-3F7
MOODY, JOHN WILLIAM
a/k/a: MOODY, JOHN W.; MOODY, JOHN
Debtor(s)

ORDER ON MOTION TO REOPEN CASE

This case is before the Court upon the motion of the debtor(s) to reopen this closed Chapter 7 case. The motion requested this relief to file a Motion to Proceed on Bond of Chapter 7 Trustee. It is

ORDERED as follows:

1. The motion is denied.
2. This case was closed on May 18, 1998.
3. Although §350(b) of the Bankruptcy Code permits the Court to reopen a case to accord relief to the debtor(s), the doctrine of laches bars an action that has been delayed too long.
4. This motion is entirely too late, and the debtor(s) will therefore be required to seek relief in another court.

DATED March 22, 2000, at Jacksonville, Florida.

"S/ JERRY A. FUNK"
Jerry A. Funk
United States Bankruptcy Judge

Copies furnished to:
Debtor(s)
Trustee
United States Trustee

"APPENDIX N"

Docket for Case No. 93-02251-3F7

MOODY, JOHN WILLIAM (printed 01/30/95 at 16:12)

Date	No.	Entry
06/02/94	90	NOTICE of Appointment of Trustee and Waiver of Bond [EOD 06/02/94] [RB]

"APPENDIX O"

estoppel by representation. An estoppel that arises when one makes a statement or admission that induces another person to believe something and that results in that person's reasonable and detrimental reliance on the belief; esp,. equitable estoppel.

§ 2401. Time for Commencing action against United States

(b) a [A] tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

(June 25, 1948, ch 646, § 1, 62 Stat. 971; Apr. 25, 1949, ch 92, § 1, 63 Stat. 62; Sept. 8, 1959, P.L. 86-238, § 1(3), 73 Stat. 472; July 18, 1966, P.L. 89-506, § 7, 80 Stat. 307; Nov. 1, 1978, P.L. 95-563; § 14(b), 92 Stat. 2389.)

§ 2675. Disposition by federal agency as prerequisite; evidence

(a) An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 3:02-cv-72-J-25TEM

JOHN WILLIAM MOODY,
Plaintiff,
vs.
FEDERAL GOVERNMENT OF U.S.,
Defendant /

FILED
2002 JUL 29 P 2:27
CLERK US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

SUMMARY JUDGMENT NOTICE

A motion for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, has been filed in this case. Unless the Court notifies the parties otherwise, there will not be a hearing on this motion; instead, the Court will decide the motion on the basis of the motion, responses, briefs or legal memoranda, and evidentiary materials filed by the parties. Unless otherwise specifically ordered by the Court, any response to this motion, as well as all supporting evidentiary materials (counter-affidavits, depositions, exhibits, etc.) **must be filed** with the Clerk of this Court **on or before fourteen (14) days from the date of this Notice.** [Note: Fed.R.Civ.P. 6(e) "Additional Time After Service by Mail" is not applicable.] The Court will consider this motion and make its decision after fourteen (14) days from the date of this Notice.

The following explanatory admonitions are included here for the benefit of pro se parties (i.e., parties not

represented by an attorney) who oppose the summary judgment motion. In addition to the above paragraph, you are also advised that if the Court grants this motion for summary judgment, such would be a final decision of the Court in favor of the party filing the motion ("the movant"). As a result of such final decision, there would be no trial or other proceedings in this case, and you would likely be precluded from later litigating this matter or any related matters. Therefore, **you are hereby further advised:** (1) failing to respond to this motion will indicate that the motion is not opposed; (2) all material facts asserted by the movant in the motion will be considered to be admitted by you unless controverted by proper evidentiary materials (counter-affidavits, depositions, exhibits, etc.) filed by you; and (3) you may not rely solely on the allegations of the issue pleadings (e.g., complaint, answer, etc.) in opposing this motion. See Griffith v Wainwright, 772 F.2d 822, 825 (11th Cir. 1985).

FOR THE COURT

Date: July 29, 2002

By: Darlene Frey,
Deputy Clerk

STARE DECISIS

The doctrine of "stare decisis" simply declares that for the sake of certainty, a conclusion reached in one case should be applied to those which follow if the facts are substantially the same, even though parties may be different. In re Burtt's Estate, 44 A.2d: 670, 677, 353 Pa. 217.

STARE DECISIS

Limited to points actually determined.

Nothing can be "stare decisis" which was not actually considered and determined. In re Brolasky's Estate, 153 A. 739, 741, 302 Pa. 439.

CARTER v. RODGERS
Cite as 220 F.3d 1249 (11th Cir. 2000)

Clyde Thomas CARTER,
Plaintiff-Appellant
v.
Bob RODGERS, Individually and, in his capacity as Trustee in the Clyde Thomas Carter Bankruptcy, Clements Antiques of Tennessee, Inc., et al., Defendants-Appelles.

No. 99-13703

United States Court of Appeals,
Eleventh Circuit

Aug. 2, 2000

Plaintiff, a Chapter 7 debtor, sued former Chapter 7 trustee and antique company that had been appointed to conduct sale of plaintiff's personal property, alleging breaches of fiduciary duties and duties of reasonable care with respect to plaintiff's bankruptcy estate. The United States District Court for the Northern District of Alabama, No. 97-03063-CV-S-NE, C. Lynwood Smith, Jr., J., dismissed for lack of subject matter jurisdiction. Plaintiff appealed. The Court of Appeals, Hull, Circuit Judge, held, as matter of first impression, that: (1) debtor must first obtain leave of the bankruptcy court before initiating an action in district court when that action is against the trustee or other officer appointed by bankruptcy court, for acts done in the actor's official capacity; (2) plaintiff was required to obtain leave of bankruptcy court before

bringing suit, and failure to do so deprived district court of subject matter jurisdiction; (3) plaintiff's claims were "related to" and "within the scope" of the bankruptcy proceeding, thus giving bankruptcy court jurisdiction; and (4) statute permitting suits against trustees and receivers, without leave of appointing court, with respect to any of of their acts or transactions in carrying on the business connected with such property, did not apply.

Affirmed.

A proceeding is within the bankruptcy jurisdiction, defined by 28 U.S.C. § 1334(b), if it "arises under" the Bankruptcy Code or "arises in" or is "related to" a case under the Code. " 'Arising under' proceedings are matters invoking a substantive right created by the Bankruptcy Code. The 'arising in the case under' category is generally thought to involve administrative-type matters, or as the...court put it, 'matters that could arise only in bankruptcy.'" *In re Toledo*, 170 F.3d 1340, 1345 (11th Cir.1999) (citations omitted). We have stated, "The unusual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy." *Miller v. Kemira, Inc.* (*In re Lemco Gypsum, Inc.*), 910 F.2d 784, 788 (11th Cir. 1990).

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-2209
Non-Argument Calendar

D. C. Docket Nos. 94-639-CIV-J-20, 93-2251-BKC-3P7

IN RE: JOHN WILLIAM MOODY,
Debtor
JOHN WILLIAM MOODY,
Plaintiff-Appellant,
versus
SECURITY PACIFIC FINANCIAL CORP.,
Defendant-Appellee.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JAN 16 1996
MIGUEL J. CORTEZ
CLERK

No. 95-2466 Non-Argument Calendar

D. C. Docket Nos. 95-157-CIV-J-20, 93-2251-BKC-3P7
IN RE: JOHN WILLIAM MOODY,
a/k/a John W. Moody,
a/k/a John Moody,
Plaintiff-Appellant.

Appeals from the United States District Court
for the Middle District of Florida

(January 16, 1996)
Before BIRCH, DUBINA and CARNES, Circuit Judges.

PER CURIAM:

John William Moody appeals the district court's confirmation of the bankruptcy court's orders that both

[DO NOT PUBLISH]

"APPENDIX W"

converted his case from a Chapter 11 proceeding to a Chapter 7 proceeding and discharged his debts. Moody originally filed a voluntary petition for bankruptcy under Chapter 11 of the Bankruptcy Code and submitted a plan for reorganization, to which the United States Trustee (Trustee) objected on the ground that it was funded inadequately. Pursuant to the Trustee's request and a confirmation hearing, the bankruptcy court converted the case from a Chapter 11 to a Chapter 7 proceeding. Moody appealed the bankruptcy court's conversion and discharge orders to the district court, which denied relief.

On appeal to this court, Moody raises numerous issues concerning the bankruptcy court's ruling.[1] We will not set aside the factual findings of the bankruptcy court unless they are clearly erroneous. In re Calvert, 907 F.2d 1069, 1071 (11th Cir. 1990). We review the conclusions of law made by the bankruptcy court and the district court de novo. Id. (citations omitted). After review of the records from both the bankruptcy court and the district court, we agree with the dispositions of both courts and find no merit to any of Moody's claims.

AFFIRMED.

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[1]Moody argues that the bankruptcy court erred by not complying with procedural and notification requirements of Federal Rules of Bankruptcy Procedures 2002 and 9014. He also contends that the bankruptcy court erroneously failed to place the burden for establishing grounds for conversion on the party seeking conversion, the Trustee. Moody claims that the bankruptcy court abused its discretion by refusing to allow him to prepare a financial analysis of creditor's benefits under Chapter 7 versus Chapter 11 and by refusing to grant his motion for reconsideration. Moody further alleges that the bankruptcy court did not have jurisdiction to issue its order discharging his debts and that there was insufficient evidence present to support this discharge order. Finally, Moody claims that various aspects of the Bankruptcy Code violate due process and Amendment IX of the Constitution.

BLACK'S LAW DICTIONARY

stare decisis (**stahr**-ee di-**si**-sis *or* **stair**-ee), n. [Latin "to stand by things decided"] The doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation.See PRECEDENT; NON QUIETA MOVERE. Cf. RES JUDICATA; LAW OF THE CASE.

"The rule of adherence to judicial precedents finds expression in the doctrine of stare decisis. This doctrine is simply that, when a point or principle of law has been once officially decided or settled by the ruling of a competent court in a case in which it is directly and necessarily involved, it will no longer be considered as open to examination or to a new ruling by the same tribunal, or by those which are bound to follow its adjudications, unless it be for urgent reasons and in exceptional cases." William M. Lile et al., *Brief Making and the Use of Law Books 321 (3d ed. 1914).*

TITLE 11, USC, § 322

§ 322. Qualification of trustee

(a) Except as provided in subsection (b)(1), a person selected under section 701, 702, 703, 1104, 1163, 1302, or 1202 of this title to serve as trustee in a case under this title qualifies if before five days after such selection, and before beginning official duties, such person has filed with the court a bond in favor of the United States conditioned on the faithful performance of such official duties.

(d) A proceeding on a trustee's bond may not be commenced after two years after the date on which such trustee was discharged.

LAW OF THE CASE

The "law of the case" doctrine is inapplicable where prior decision lays down a principle of law for future guidance which is unsound. Standard Oil Oil Co. of California v. Johnson, 132 P.2d 910, 913, 56 Cal.App.2d 411.

Res judicata / riyz jùwdekéyte/ . A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. Matchett v. Rose, 36 Ill.App.3d.638, 344 N.E.2d 770, 779. And to be applicable, requires identity in thing sued for as well as identity of cause of action, of persons and parties to action, and of quality in persons for or against whom claim is made. The sum and substance of the whole rule is that a matter once judicially decided is finally decided. Allen v. McCurry, 449 U.S. 90, 101 S.Ct. 411, 415, 66 L.Ed.2d 308. *See also* Collateral estoppel doctrine; Final decision rule; Issue preclusion.